

18. (SBU) This language seems to make it difficult for foreign

governments and NGOs to assist political parties in preparing for elections. Kennedy said the language appears to prohibit many kinds of assistance that the UN has traditionally provided in emerging democracies. At the August 3 meeting of the international Election Donors Group (EDG), he cautioned all the representatives of the embassies present to take this language very seriously, and to make a thorough evaluation of what types of assistance they could provide. For example, Kennedy said he has asked the UNMIS legal advisor to provide an opinion as to whether UNMIS could respond to a request for assistance from the Government of Southern Sudan, or whether it could only respond to such requests from the national government and the NEC.

COMPLETE LISTS PLUS CASH DEPOSITS EQUALS BIG BUCKS

19. (SBU) The election law requires each party participating in a given election (for example, for the National Assembly) to present a complete list of candidates for geographic constituencies as well as for the women's lists for that election. Each list must present a candidate for every seat up for election. This presents a perhaps insurmountable challenge for some of Sudan's smaller parties, particularly when coupled with two other requirements: First, the law contains a literacy requirement for all candidates, for all the legislative assemblies - and this in a country with widespread illiteracy, which is particularly high among women. The literacy requirement alone amounts to a substantial hurdle to the smaller parties - again, parties are required to field literate candidates for all available legislative seats, not just for those that they have a reasonable chance of winning. Second, the law demands that each party put down a substantial cash deposit for each candidate. Kennedy did the math, and points out that the deposit bill for each political party fielding candidates for the National Assembly alone (not including Sudan's many state assemblies) comes to \$22,500 (USD).

110. (SBU) The law stipulates that deposits will be returned to the parties only for seats for which they are victorious. The upshot here is that the smaller parties are required to post complete party lists, with a candidate for each seat in a legislative body, and then must pay a deposit for each candidate, when in fact these parties have little possibility of winning but a handful of seats. The result: smaller parties stand to forfeit substantial amounts of money in each election. If this provision is allowed to stand, the "perfect storm" of complete lists, literacy requirements, and cash deposits threatens to become an insurmountable barrier, intimidating many of the smaller parties from participating. In addition, the cash requirements will put a premium on parties "selling themselves" to well-heeled domestic donors (there does not appear to be a limit on domestic campaign contributions), with all the potential for corruption that entails.

111. (SBU) Kennedy told the EDG on August 3 that disadvantaging smaller parties is not necessarily a bad thing - such measures can discourage the rampant proliferation of political parties, encouraging the consolidation of the atomized political landscape (this is of course the reason for the four-percent threshold requirement). However, for a transitional assembly, and for a transitional election, the international tendency is to provide for a more wide-open, inclusive election, he said.

LITERACY REQUIREMENT IS UNDEMOCRATIC

112. (SBU) Further, the literacy requirement is inherently undemocratic in a country with widespread illiteracy, where literacy is a function of economic privilege. Kennedy notes that many countries do not have such requirements for candidates to legislative assemblies. For example, Brazil's lack of a literacy requirement permitted participation by a number of indigenous leaders.

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VARIOUS ERRORS TO BE CORRECTED BY JUSTICE MINISTRY

113. (SBU) Kennedy commented that the law was full of evidence of sloppy drafting. For example, there were several instances of incorrect cross references. Also, as another example, the law's provision that 25 percent of the membership of the 450-member National Assembly are to be women presents a problem: 25 percent of 450 is not a whole number. The law contains no mechanism to resolve this issue; there's no problem if everyone agrees that the law means to say "at least 25 percent," but this provision of the law, and other inaccuracies, could give rise to lengthy legal challenges. Similarly, the law provides for no method of determining "fractional seats" that result from the apportionment process. Kennedy commented that this issue is always extremely contentious in the U.S., "so why should we expect it to be any less contentious in Sudan?" Kennedy reported to the EDG August 3 that he has been told that the Sudanese national Ministry of Justice will be able to correct many of these technical issues without further action by the National Assembly. However, these fixes could prove contentious themselves.

LAW CALLS FOR TIMELY TABULATION OF VOTES

114. (SBU) The law seems to require timely tabulation of votes, avoiding some of the potential for a Zimbabwe-type result. Votes are to be sorted and counted at the country's polling stations immediately after the closing of the polls, and the process is to continue uninterrupted until it is finished. At that point, election officials are required immediately to display copies of the sorting and counting report at a conspicuous place at the polling centers. However, beyond this point the law leaves the matter of deadlines for reporting and adding up votes to the NEC. The law tasks the election body to draft the procedures and the manner for the aggregation and declaration of results at all the levels - polling centers, geographical constituencies, the states, Southern Sudan. The Commission is charged with declaring the results of the election following the end of the period during which candidates and parties are allowed to file an appeal of the election results - which appears to be a function of their being able to observe the casting and counting of votes at the polling center level.

OBSERVERS AND MEDIA GUARANTEED ACCESS

115. (SBU) The law has language guaranteeing that international observers, representatives of the news media, and agents of political parties will have fairly comprehensive access to all stages of voting, and to the sorting and counting of votes.

Obstruction of the right of access by those parties to the electoral process is to be punished with a prison term of six months to two years and/or with a fine to be determined by the competent court. The NEC is charged with licensing international observers. The extent to which a comprehensive, coordinated observation effort by international observers will be permitted depends on the independence of the NEC.

IS THE ELECTION LAW SUFFICIENT UNTO ITSELF?

¶16. (SBU) The NCRC purposely tried to draft the election law so that it would be fairly complete in itself, as reported by the co-chairman of the NCRC (Ref B). The Commission was sensitive to the very real possibility that the National Assembly would not be able to pass other reform legislation before elections, as stipulated in the CPA, in particular new laws on the media and on security. For example, Chapter 10 of the law is devoted to prohibition of "corrupt and illegal practices and (other) election offences," including bribery, use of undue influence, falsification of election registers, obstruction of election officials, infringement of secrecy of the ballot, obstruction of voter participation.

¶17. (SBU) However, it remains to be seen whether the law itself will prove up to the task of ensuring free and fair elections. The Italian Ambassador, who serves as coordinator of the AEC's Power Sharing Working Group (with responsibilities for elections), believes very strongly that free and fair elections will not be possible unless and until the legislative reforms called for in the CPA, and in particular the media and security laws, are passed. Failing that, "the social context for free and fair elections cannot exist," he said.

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MANDATORY COMMITMENT TO THE CPA

¶18. (SBU) Notably, all candidates and parties "in any election" are required to submit a certificate pledging a personal commitment to "respect, abide by and enforce the Comprehensive Peace Agreement." This requirement, in Chapter 11, seems to have the effect of enshrining the CPA as the supreme law of the land; no similar provision is in place for the provisional national constitution, for example. Further, while the requirement may serve the interests of peace in Sudan, it limits the extent of political debate in the country.

COMMENT

¶19. (SBU) Charitably speaking, Sudan's new election law makes a good start at laying the groundwork for free and fair elections. Nevertheless, the main responsibility for organizing the entire election system, and holding free and fair elections, is given to the National Electoral Commission, which is provided for by the law itself. Tellingly, the President has not yet even announced his candidates for the NEC, although that deadline is fast approaching (August 14). We have been told by several sources in the NCP that an announcement is "imminent" though. The National Assembly will then have to approve candidates before the NEC can even begin its activity. That activity amounts to a truly daunting task - the NEC must first create its own bureaucracy, and then set to work creating and then implementing the rules and regulations for the country's entire electoral machinery in Africa's largest country. Much of that activity must await the availability of the census data; in particular, the Commission needs that data before it can begin the huge and complex task of drawing the electoral districts. This is a contentious process that has dragged on sometimes for years in certain regions of our own country.

¶20. (SBU) As the chairman of the NCRC told us some weeks ago (Ref B), Sudan is going to need a lot of assistance from its international partners to get its electoral machinery up and running. Right now, the country does not have this expertise. This job is made problematic by the blanket ban on foreign assistance to Sudan's political parties in funding their campaign activities, which are broadly defined. The donor community will need to wait for the NEC to create itself before it has a responsible interlocutor on providing assistance.

¶21. (SBU) But the ban on foreign financing is not the most troublesome aspect of the new election law. That honor goes first to what is probably the unreasonable timeline for elections set out in the law, and then, second, to the considerable obstacles to full participation of smaller parties formed by the requirements for complete candidate lists, cash deposits for candidates, and literacy requirements, as discussed above. Smaller parties - such as the lesser factions of the DUP and the Umma party, as well as southern political parties which barely figure into the political landscape but will want to participate in elections nonetheless - do not seem to have focused yet on these looming hurdles, having been preoccupied by the issues of the four-percent threshold, and the balance of geographic constituencies vs. proportional representation.

¶22. (SBU) The USG will have to give careful consideration to the types of assistance it can provide to Sudan's political parties, as well as to the country's National Elections Commission, not only considering the ban on foreign support to political parties, but also considering our sanctions regime. We will continue to work closely with UNMIS and the other embassies which are engaged in this process to see how they plan to support the elections, and will consult with other embassies who may also be contemplating political party support. This is going to be a long, complex process made frantic by the pressing deadlines and constant deal-making between the parties (and especially the CPA parties - the NCP and the SPLM) at each stage of the process.

FERNANDEZ